IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2006

CORAM:

THE HONOURABLE MR.JUSTICE A.KULASEKARAN

WRIT PETITION NO.26388 of 2004

S.M.S. Lakshmi .. Petitioner

Versus

1. The Government of India,
represented by its Secretary
Ministry of Home Affairs,
New Delhi

2. The Deputy Secretary to Government
of India (F.F.(INA)
Ministry of Home Affairs
Lok Nayak Bhavan,
Khan Market, New Delhi-110 003 .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus as stated therein.

For Petitioner : Mr.A.P.Suryaprakasam
For respondents : Mr.S.R.Sundaram,SCGSC

O R D E R

The petitioner seeks for the issue of a writ of certiorarified mandamus, to quash the impugned order dated 24.3.2004 passed by the second respondent, Deputy Secretary to Government of India (F.F.(INA) Ministry of Home Affairs in his proceedings F.No.52/CC/9/2004 FF(INA) Ministry of Home Affairs, Government India and to direct the respondents to grant pension to the petitioner under the said scheme with effect from 22.5.1982.

2. The brief facts of the case are as follows:
The husband of the petitioner viz., late S.M.Shanmugam was a freedom fighter and had participated in Indian Independence struggle. He was a member of Indian National Army organised by Netaji Subash Chandra Bose and also a member of Indian Independence League. He had also actively participated in the propaganda Department of I.N.A. from 1942 till May 1945. In the course of freedom struggle, he was also arrested and detained by the British Forces in Rangoon Central Jail for more than six months between May 1945 and December 1945. To honour and aid the needy families of the Freedom Fighters, the Government brought a Scheme in 1972, commemorating the Silver Jubilee of Indian Independence known as "Swanthantra Sainik Samman Pension Scheme". As per the said scheme, the

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freedom fighters, who suffered six months or more imprisonment in the course of their struggle, are eligible to claim pension. The freedom fighter's families are also eligible for the said scheme. The petitioner had applied for Freedom Fighters pension in May 1982 and she had produced a co-prisoner certificate from one S.Thangasamy, who had claimed to be a Central Freedom Fighter pensioner, and the said application was rejected on the ground of delay. Hence the petitioner filed a writ petition in W.P.No.2721 of 1991 before this Court and this Court quashed the decision of rejecting the application of the petitioner and remitted the matter back to the respondents for reconsidering the application of the petitioner on merits. But the said application was once again rejected. Again the petitioner filed W.P.No.36113 of 2003 before this Court and this Court by order dated 29.12.2003, directed the second respondent to reconsider the claim of the petitioner in the light of the decision of a Division Bench of this Court reported in 1994 Writ Law Reporter 137 (R.Thangavelu-vs-The Government of India, rep. by its Secretary, Ministry of Home Affairs and another). In and by the impugned order the second respondent rejected the claim of petitioner, hence the above writ petition.

3. Mr.A.P.Suryaprakasam, learned counsel appearing for the petitioner submitted that the petitioner's husband has suffered detention for six months, who died on 16.3.1969; that the co-prisoner, who is receiving pension from the respondent was also sent; that the co-prisioner also receiving pension from the State Government, but the respondents without considering the same originally rejected the claim of the petitioner.. It is brought to the notice of this Court by Mr.A.P.Suryaprakasam that in W.P.No.36113/2003, this Court directed the respondents to take into consideration the freedom fighter pension granted by the State Government and also the order passed by the Division Bench of this Court in 1994 Writ Law Reporter 137 (R.Thangavelu-vs-Government of India and another) to consider the claim of the petitioner and pass orders. In the said decision, the Division Bench has held that once either the State Government or the Central Government grants pension to a particular freedom fighter, he must automatically get the other pension either under the State Government or under the Central Government Scheme without any further enquiry, on the claimants satisfying the guideline, and the Government cannot reject the claim summarily that he is not a freedom fighter at all; that the petitioner is receiving the Freedom Fighter scheme from the State Government, while so, it is not open to the respondents to go for further enquiry and pass orders by rejecting the same.

4. Mr.S.R.Sundaram, learned Senior Central Government Standing Counsel appearing for the respondents submitted that the petitioner is entitled to pension only on satisfying the facts which are required as per the scheme and on the basis of the pension granted by the State Government, she is not entitled to the pension automatically and prayed for dismissal of the writ petition.

5. This Court has carefully considered the argument of both sides and also perused the relevant records. IN and by the impugned order, the petitioner's claim was rejected by the second respondent for the second time for the reasons mentioned below:-

"(i) She was registered as a citizen of India only on

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24.5.83. This implied that she was a citizen of Burma. This also implied that her late husband was also a citizen of Burma at the time of her death on 16.3.69. Therefore, he was not eligible for pension under SSS Pension scheme, as it was not open to citizens of other countries.

(ii) Senior Officers of INA had opined, while examining the case of an ex-IIL applicant that a member of a branch of the Indian Independence League is not likely to have been imprisoned for six months or more.

(iii) She had claimed to be Indian Citizen in the application dated 22.5.82 whereas she was registered as Indian Citizen only on 24.5.83"

6. It is the admitted fact that the petitioner is receiving State Government pension. The Division Bench of this Court in the decision reported in (R.Thangavelu-vs-Government of India and another) 1994 Writ Law Reporter, 137 (stated supra) has held as follows:

" Materials to be taken into account before passing orders:-

The Government should also take into account the book published by them under the title "Who is Who" containing the names of freedom fighters and act upon the same. Equally, when once the Central Government grants the pension after satisfying themselves about the fulfillment of the conditions stipulated in the Scheme, it will not be fair for the State Government to reject the claim of the State Pension. Similarly, if the State Government grants pension to a freedom fighter, the same should be accepted by the Central Government and no further proof should be insisted upon. In other words, once either the State Government or the Central Government grants pension to a particular freedom fighter, he must automatically get the other pension either under the State or under the Central Government Scheme without any further enquiry, on the claimants satisfying the guidelines, and the Government cannot reject the claim summarily that he is not a freedom fighter at all. Further, when once Tamara Patra has been granted recognising the valuable services rendered during freedom struggle, the concerned Government should automatically grant pension without any further enquiry or proof".

7. The relevant portion of the order passed by P.SATHASIVAM,J., in W.P.No.36113 of 2003 is as follows:

"7. . . . . Among the conditions, it is relevant to note that if the State Government grants pension to a freedom fighter, the same should be accepted by the Central Government and no further proof should be insisted upon. The said decision of the Division Bench has become final. As a matter of fact, based on the Division Bench decision, several orders have been

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passed by this Court directing both Central and State Governments to pass orders in accordance with the guidelines prescribed above. The said decision is directly applicable to the case of the petitioner.

8. In the light of the order of the State Government granting freedom fighters pension(vide under dated 5.11.1986 at pages 9 and 10 of the typed set of papers) and in view of the decision of the Division Bench, Petitioner's request has to be considered by the respondents.

9. In the light of what is stated above, the impugned order of the second respondent is quashed and the second respondent is directed to reconsider the claim of the petitioner in the light of the Division Bench decision reported in 1994 Writ Law Reporter 137 (R.Thangavelu-vs-The Government of India rep. by its Secretary, Ministry of Home Affairs and another) and pass orders in accordance with law within a period of eight weeks from the date of receipt of a copy of this order."

8. In the above said W.P.No.36113/2003, this Court has held that the order passed by the Division Bench reported in (R.Thangavelu-vs-Government of India and another) 1994 WLR 137 has become final, following the same, this Court passed several orders, directing both State and Central Governments to pass orders in accordance with the guidelines prescribed above, and directed the respondents to consider the claim of the petitioner in the light of the same. Admittedly, the respondents have not filed any appeal against the said order passed in WP No. 36113 of 2003 passed by this Court.

9. The respondents, for the second time, rejected the application of the petitioner on 04.08.1999 by assigning three reasons. The first reason for the rejection of the petitioner's application is that the petitioner was registered as a citizen of India only on 24.5.1983 and at the time of filing the application, she was a citizen of Burma and her husband was also a citizen of Burma at the time of his death on 16.03.1999, hence, the petitioner was not eligible for pension under SSS Pension Scheme, as it was not open to citizens of other countries. The documents produced by the petitioner show that the respondents entertained further request from the petitioner by way of proforma in respect of rejected cases and the petitioner has also submitted the said proforma on 29.1.1990 and at the time of presenting the proforma, the petitioner has acquired Indian Citizen ship. Even after the receipt of the proforma, it was rejected by the respondents mentioning the very same ground that even prior to acquisition of Indian Citizenship, the petitioner has filed the application. It is alleged in the impugned order that Senior Officers of I.N.A. had opined, while examining the case of the petitioner's husband, that he claimed to be a member of the branch of the Indian Independence League hence he is not likely to have been imprisoned for six months or more, which is nothing but a vague reasoning, besides, the details of the person who opined and the documents verified not given.

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10. In and by the order in WP No. 36113 of 2003 dated 29.12.2003, the matter was remanded by this Court to the second respondent to consider the claim of the petitioner in the light of the decision of the Division Bench reported in (R.Thangavelu-vs-Government of India and another) 1994 WLR 137 and pass orders within a period of eight weeks. After the said remand, the petitioner's application was rejected on the ground that the petitioner has not produced any documentary evidence as required in the scheme in respect of the sufferings undergone by her husband. It is also stated that the Central Government scheme for grant of pension to freedom fighters and their dependents is a distinct scheme and has no relation with the freedom fighters pension scheme of Government of Tamil Nadu, hence, the basis for claiming pension that the State Government Pension is received by the petitioner without satisfying the requirements of the Central Government Pension Scheme cannot be accepted.

11. The documentary evidence enclosed by the petitioner is a certificate issued by Mr. Thangasamy, who is the recipient of pension under the Scheme. The said evidence is a valid one until it is controverted by any other evidence. The said certificate was not even considered by the second respondent nor assign any reason for not considering the same. It is also not mentioned in the impugned order that the name of the said Thangasamy is found mentioned or not in the book 'who is who' which is treated as a valid piece of evidence all along. The second respondent also not stated in the impugned order as to which condition of the guidelines not satisfied by the petitioner, particularly when she is a recipient of State Government pension. The scheme was introduced with the object of providing grant of pension to living freedom fighters and their families as the freedom fighters participated in the freedom struggle without any expectation for grant of any scheme at the relevant time, besides it is also not easy to get the certificate from foreign countries, hence, the respondents are required to follow rationale approach and not a technical approach. The case of the claimants under this scheme is required to be determined on the basis of probabilities and not on the touchstone of the test of 'beyond reasonable doubt'. The impugned order is passed by the second respondent with a biased and closed mind. Moreover, the petitioner's application was first rejected on the ground of delay; for the second time, it was rejected on the ground that the petitioner has acquired citizenship belatedly and thirdly, it was returned by stating that no documentary evidence was produced by her, thus, the petitioner was unnecessarily been dragged to litigation thrice for no fault of her. In this context, it is relevant to look into the decision of the Honourable Supreme Court reported in (Gurdial Singh v. Union of India and others) wherein in Para Nos. 6, 7 and 8, it was held thus:-

> 6. The Scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of the citizens who suffered imprisonment were handicapped to get the

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relevant record from the jails where they had suffered imprisonment. The problem of getting the record from a foreign country is very cumbersome and expensive. Keeping in mind the object of the Scheme, the concerned authorities are required that in appreciating the Scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the Scheme are supposed to be such persons who had given the best part of their life for the country. This Court in Mukund Lal Bhandari's case (supra) observed:

> "The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the freedom struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the Scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependents. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc. are also the other benefits which have been made available to them for quite sometime now."

The Court categorically mentioned that the pension under the Scheme should be made payable from the date on which the application is made whether it is accompanied by necessary proof of eligibility or not.

7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is

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to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by Scheme have suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.

8. We have noticed with disgust that the respondent authorities have adopted a hyper-technical approach while dealing with the case of a freedom fighter and ignored the basic principles/objectives of the Scheme intended to give the benefit to the sufferers in the freedom movement. The contradictions and discrepancies, as noticed hereinabove, cannot be held to be material which could be made the basis of depriving the appellant of his right to get the pension. The case of the appellant has been disposed of by ignoring the mandate of law and the Scheme. The impugned order also appears to have been passed with a biased and closed mind, completely ignoring the verdict of this Court in Mukund Lal Bhandari's case. We further feel that after granting the pension to the appellant, the respondents were not justified in rejecting his claim on the basis of material which already existed, justifying the grant of pension in his favour. The appellant has, unnecessarily, been dragged to litigation for no fault of his. The High Court has completely ignored its earlier judgments in CWP No. 3790 of 1994 entitled Mohan Singh v. Union of India decided on 11-12-1995."

12. In view of the said discussion, the impugned order is set aside and the respondent is directed to pay pension to the petitioner from 29.1.1990, the date of proforma filed by the petitioner which was also entertained by the respondents and the respondents are further directed to pay the arrears upto date within a period of 12 weeks from the date of receipt of a copy of this order. It is also made clear that respondents

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are liable to pay future pension every month without any default. The writ petition is disposed of. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To
1. The Secretary
Ministry of Home Affairs,
New Delhi

2. The Deputy Secretary to Government
of India (F.F.(INA)
Ministry of Home Affairs
Lok Nayak Bhavan,
Khan Market, New Delhi-110 003

+ 1 CC To Mr.S.R.Sundaram, Advocate SR NO.32606

+ 1 CC To Mr.A.P.Suriyaprakasam, Advocate SR NO.32383

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